



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Monday the 01st day of March, 2021)

APPEAL No.711/2019

(Old No.103(7) 2012)

Appellant

M/s. Anzar Cashew Company,
Chathinamkulam,
Chandanathope P.O,
Kollam - 691014

Respondent

The Assistant PF Commissioner
EPFO, Regional Office
Parameswar Nagar
Kollam – 691 001

By Adv. Pirappancode V.S Sudheer
Adv. Megha A

This case coming up for final hearing on
03/02/2021 and this Tribunal-cum-Labour Court on
01/03/2021 passed the following:

ORDER

Present appeal is filed from Order No. KR / KLM /
16262 / PD / 2010-11 / 3217 dt. 03.10.2011 assessing
damages U/s 14B of EPF & MP Act, 1952 (hereinafter
referred to as 'the Act') for belated remittance of contribution

for the period 03/2007 to 12/2009. The total damages assessed is Rs.1,40,659/-. The interest demanded U/s 7(Q) of the Act for the same period in the composite order is also being challenged in this appeal.

2. Appellant is an establishment engaged in processing of raw cashew and selling of cashew kernels and related products. It is covered under the provisions of the Act. The appellant received a summons dt. 26/08/2011 alleging delay in remittance of provident fund contribution for the period 03/2007 to 12/2009 and directing to show cause why damages U/s 14B and interest U/s 7Q of the Act shall not be levied for belated remittance of contribution. An authorized representative of the appellant appeared before the authority along with challan details. The appellant pointed out that there was no delay in payment of contribution except a few belated remittances. The respondent in the proceedings dt. 06/09/2011 recorded that the authorized representative requested for time for making the remittance. A true copy of the proceedings dt. 06/09/2011 is produced and marked as Annexure A3. The appellant remitted the interest U/s 7Q and send a letter dt.03/10/2011 requesting to waive the damages. The request dt. 03/10/2011 is produced and marked as

Annexure A5. The respondent issued the impugned order ignoring the contentions of the appellant. There was no willful defiance of law on the part of the appellant. The respondent issued the impugned order without applying his mind to the circumstances pleaded by the appellant. The respondent issued the order in a cursory manner. The respondent ought to have taken into considering various relevant circumstances like the number of defaults, the extend of delay and the frequency of default etc., There is no mensrea in delayed remittance of provident fund contribution and therefore the appellant cannot be tagged with penalty when he is not guilty. The respondent ought to have considered the mitigating circumstances leading to the delayed payment of contribution.

3. The respondent filed counter denying the above allegations. The appellant establishment is a chronic defaulter in remitting provident fund and other allied contribution in respect of its employees. The appellant establishment deliberately delayed the remittance of provident fund dues and diverted the money into his business. The contention of the appellant that they were prompt in remittance of contribution was denied by the respondent. Any delayed remittance of provident fund contribution will attract damages

U/s 14B of the Act, read with Para 32A of EPF Scheme. Since there was delay in remittance of contribution, a notice was issued to the appellant to show cause with documentary evidence why damages shall not be levied for belated remittance of contribution. A delay statement showing the amount the due date of payment, the actual date of remittance and the delay in remittance was also communicated to the appellant. The appellant was also given an opportunity for personal hearing on 06/09/2011. An authorized representative of the appellant attended the hearing, admitted the delay and sought some time to remit the damages and interest. Hence the enquiry was adjourned to 27/09/2011. Since the appellant failed to remit the damages and interest and a fair opportunity had already been given, the respondent issued the impugned order. The damages is levied against defaulted period after due process of law. The appellant was also heard on any error in calculation and also the period of delay and other related issues as a matter of natural justice. The delay in remittance of contribution was accepted by the appellant. Hence the impugned order is legally correct following the procedure laid down under the Act and Schemes. Being an enforcing authority

under the Act the respondent is duly bound to ensure that the dues are collected from the employers in time and is invested properly to provide maximum interest rate to the poor employees who are beneficiaries of the welfare legislation. The delayed payment of contribution will affect the investment of the funds and also the interest to be paid to the employees. It will also affect the quantum of benefits payable under the Pension Scheme.

4. The case of the appellant is that the mitigating circumstances leading to the delay in remittance of provident fund contribution is not considered by the respondent authority. Even in this appeal the appellant failed to disclose the mitigating circumstances that are required to be considered while deciding the quantum of damages. The only document available is a letter dt. 03/10/2011 issued by the appellant addressed to the respondent wherein it was stated that there was huge loss due to hike of processing charges of raw cashew and lack of timely foreign contract for export. It is to be pointed out that even this representation dt. 03.10.2011 is after finalization of the proceedings on 27/09/2011. Hence the claim of the appellant that the mitigating circumstances are not considered by the respondent has no basis. The

appellant also claimed that the representative of the appellant produced the copies of challans before the 14B authority. However in Annexure A3 daily proceedings order dt.06/09/2011 it is clearly indicated that “Shri.Vinod requested for time to make payment as the Chairman is out of the country.” There is no recordings in the proceedings that the representative of the appellant produced any records before the respondent authority on the said date. The appellant now disputes these proceedings on the ground that the representative never admitted to make the payment as per the notice. If that be so, it is not clear as to what prevented the representative to pointed out this anomaly on the date of hearing when the proceedings was issued to the appellants representative who attend the hearing.

5. The only ground pleaded by the appellant is that of financial difficulties. When the appellant pleaded financial difficulties it was up to the appellant to produce the records before the respondent to substantiate their claim. The appellant failed to produce any records before the respondent authority. The appellant also failed to produce any document to substantiate their claim of financial difficulties in this appeal also. In ***Sree Kamakshy Agency Pvt. Ltd Vs EPF***

Appellate Tribunal and Another, 2013 (1) KHC 457 the Hon'ble High Court of Kerala held that " If it is shown in that one was under severe financial difficulties on account of reasons stated and the documents in support of the said fact is produced, the authorities are bound to consider the same in a pragmatic manner and not taking a pedantic approach". The Hon'ble High Court of Delhi in ***M/s. Kee Pharma Ltd.,Vs APFC***, 2017 LLR 871 also held that the employers will have to produce the documentary evidence before the authorities which could reveal that due to mitigating circumstances the appellant establishment was restrained from compliance with the provisions of the Act in time. The law laid down in the above said decisions are squarely applicable to the present case as the appellant only admitted the liability and agreed to remit the damages before the respondent authority. Having failed to make any contention before the respondent authority, the appellant cannot plead new grounds in this appeal alleging that the respondent did not consider the mitigating circumstances of the appellant. It is further seen that the default is for the period 03/2007 to 12/2009 and the impugned order is issued on 03/10/2011. The appellant by default got more than 10 years to retain the

damages and interest amount with him which in the hands of the respondent organization could have benefitted the poor employees by utilizing the interest earned from the damages amount for providing better benefits. The interest component had already been credited to the employees account during 2007-2009 period. The learned counsel for the respondent also pointed out that the appellant failed to remit even the employees share of contribution deducted from the salary of employees in time. Having committed breach of trust under section 405 & 406 of Indian Penal code, the appellant cannot claim that there was no mensrea in belated payment of contribution.

6. Considering all the facts, pleadings and circumstances in this case, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer